

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

DAWN NOEL PIGNUOLA and
DAVID ROTHROCK,

Plaintiffs,

v. // CIVIL ACTION NO. 1:14CV95
(Judge Keeley)

BRITNEY SPEARS and REIGN DEER
ENTERTAINMENT,

Defendants.

ORDER ADOPTING REPORT AND RECOMMENDATION [DKT. NO. 7]

Pending before the Court is the report and recommendation ("R&R") of United States Magistrate Judge James E. Seibert. On June 5, 2014, David Rothrock ("Rothrock"), a pro se plaintiff, filed a civil rights complaint pursuant to 42 U.S.C. § 1983. Rothrock is an inmate incarcerated at the Benner Township Prison in Bellefonte, Pennsylvania. The Court referred this action to Magistrate Judge Seibert for submission of a proposed R&R, pursuant to Rule 2 of the Local Rules of Prisoner Litigation Procedure.

On August 20, 2014, Magistrate Judge Seibert recommended that, pursuant to 28 U.S.C. § 1915A, the Court dismiss Rothrock's complaint as frivolous and malicious. [Dkt. No. 7 at 5]. He also recommended that the Court issue a pre-filing injunction to prevent Rothrock from filing additional "abusive, delusional filings in this court." For the following reasons, the Court **ADOPTS** the R&R and **DISMISSES** the complaint.

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Pursuant to 28 U.S.C. § 636(b)(1)(c), the Court is required to review de novo any portion of the R&R to which an objection is made. As for those portions of a recommendation to which no objections are made, a magistrate judge's findings and recommendation will be upheld unless they are "clearly erroneous." See Webb v. Califano, 458 F.Supp. 825 (E.D. Cal.1979). Parties waive their right to appeal from a judgment of the Court based on the R&R when they fail to timely file objections. 28 U.S.C. § 636(b)(1); Thomas v. Arn, 474 U.S. 140, 142 (1985); Wright v. Collins, 766 F.2d 841, 846 (4th Cir. 1985) (stating that pro se litigants must receive fair notice that a failure to object will result in a waiver of the right to appeal).

On August 20, 2014, Judge Seibert, through his R&R, notified Rothrock that objections were due within fourteen (14) days after being served a copy of the R&R, and explicitly warned him of the consequences of his failure to object. To date, Rothrock has filed no objections; therefore, the Court's review of the R&R is for clear error only.

I.**A. Background**

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On June 6, 2014, Rothrock filed a complaint pursuant to 42 U.S.C. § 1983. The Clerk issued a Notice of Deficient Pleading on June 12, 2014, and directed Rothrock to file his complaint on a court-approved form and either pay the \$400 filing fee or file an application to proceed in forma pauperis. Rothrock received the Notice of Deficient Pleading on June 16, 2014. Rothrock knew he had twenty-one (21) days, or until July 2, 2014, to respond, but as of this date he has not replied.

On July 21, 2014, Judge Seibert filed an Order to Show Cause, giving Rothrock fourteen (14) days, or until August 4, 2014, to show cause why the case should not be dismissed for failure to prosecute. The order warned Rothrock that failure to respond would result in dismissal of the case. Rothrock received the order on July 24, 2014, but did not respond.

Judge Seibert points out that this case is the first of three filed in this district, although that there is no indication that Rothrock has a legitimate reason for filing any complaint in the Northern District of West Virginia. Judge Seibert conducted a PACER search that documented that Rothrock has filed eighteen cases in eleven districts between April 7, 2014 and July 7, 2014.

Judge Seibert also noted that, in the majority of the cases, Rothrock has filed a complaint in his name and the name of another

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prisoner in his or another facility, but rarely has listed himself as the lead plaintiff. The complaints allege "ludicrously bizarre, nonsense claims that are often lewd, sexual, and very vile," and the instant case is no exception. [Dkt. No. 7 at 2]. Rockroth often has included a public figure as a co-plaintiff or as a defendant. Furthermore, his complaints usually have alleged some far-fetched connections to groups like the Mafia, Zionists, Al-Qaeda, Illuminati, and others.

In the instant complaint, among many nonsensical allegations, Rothrock claims that the celebrity defendant is involved in a government conspiracy. He also alleges that another individual is in a secret relationship with the celebrity, resulting in an altercation between the celebrity and the lead plaintiff, Pignuola. Judge Seibert observed that after Rothrock has filed his complaints or motions, he typically does nothing further.

II.

Judge Seibert found no objective basis to believe that Rothrock could prevail on any of his claims, and he opined that a pre-filing injunction would be the only way to deter Rothrock from further wasting the judicial resources of this district. Similarly, in Rahman et al v. Khatallah, No. 3:14-CV-65 (N.D.W. Va. Sept. 17, 2014), and Rahman et al v. Khatallah, No. 2:14-CV-46

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(N.D.W. Va. Sept. 23, 2014), the two other cases filed by Rothrock in this district, the R&Rs recommended a pre-filing injunction. In adopting the R&Rs, the Honorable Gina M. Groh, United States District Court Judge for the Northern District of West Virginia, and the Honorable John Preston Bailey, Chief United States District Court Judge for the Northern District of West Virginia, imposed pre-filing injunctions on any future filings by Rothrock with the exception of a notice of appeal for the case, a case filed from a West Virginia facility, or a habeas petition. Thus, as a pre-filing injunction is already in effect in the Northern District of West Virginia for any future filings by or on behalf of Rothrock, the Court **DENIES AS MOOT** the recommendation for another pre-filing injunction.

III.

For the reasons discussed, the Court **ADOPTS** the Report and Recommendation of the magistrate judge and **ORDERS** the following:

1. Plaintiff Dawn Noel Pignuola and defendants Britney Spears and Reign Deer Entertainment are **DISMISSED**; and
2. The complaint is **DISMISSED** in its entirety as frivolous and malicious, pursuant to 28 U.S.C. § 1915A.

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The Clerk of the Court is **DIRECTED**, upon entry of this Order, to send a copy of the R&R [Dkt. No. 7] and a copy of this Order to the warden of the Benner Township Prison in Pennsylvania, together with a copy of David Rothrock's filing [Dkt. No. 1].

The Court further **DIRECTS** the Clerk to transmit copies of this Order to the pro se plaintiff, return receipt requested, and to enter a separate judgment order.

DATED: September 30, 2014.

/s/ Irene M. Keeley
IRENE M. KEELEY
UNITED STATES DISTRICT JUDGE